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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/777,032 12/30/96 CATANZARO

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IM62/0512

EXAMINER

GRAHAM, G

ART UNIT

PAPER NUMBER

1744

*20*

DATE MAILED:

05/12/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

777,032

Applicant(s)

Catanzaro

Examiner

G. Graham

Group Art Unit

1744

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 2-26-99 and 4-22-99.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 46-59 and 61-65 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 61-65 is/are allowed.
- ☒ Claim(s) 46-59 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Interview Summary, PTO-413
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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## **DETAILED ACTION**

### ***Continued Prosecution Application***

The request filed on February 26, 1999 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/777,032 is acceptable and a CPA has been established. An action on the CPA follows.

### ***Drawings***

The corrected or substitute drawings were received on February 26, 1999. These drawings are approved.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 46-53 and 55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 46, line 29, "plain" should be ---plane---.

Claim 55 appears indefinite. The back end of the feet have been defined therein as extending outwardly the same amount as the front end. However, such appears contradictory to claim 54 wherein the front end of the feet have already been defined as extending outwardly further than the back end. It does not appear both can be claimed.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 54 and 56 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Jesiolowski '464.

The patent to Jesiolowski discloses the invention as is claimed.

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*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 54, 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zandberg '574 in view of Schiffer '757 or Jesiolowski '464.

The patent to Zandberg discloses the invention substantially as claimed, with the exception of the front end of the feet extending in the same direction as the bristle head.

The patents to Schiffer and Jesiolowski disclose a figurine toothbrush wherein the bristle head extends in the same direction as the feet. See figures 1, 2 and 3.

It would have been obvious to one of skill in the art to modify the brush of Zandberg such that the bristles extend the same direction as the feet, as clearly suggested by either Schiffer or Jesiolowski, to enable a user to directly brush the teeth after hand held viewing of the figurine, without the need to turn the toothbrush around. Both Schiffer and Jesiolowski suggest that the bristles of the brush head may act as the face of the figurine. Clearly, to employ such in Zandberg would be obvious, given such teachings.

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Claims 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zandberg '574 in view of Schiffer '757 or Jesiolowski '464 as applied to claims 54 and 56 above, and further in view of Vandeventer '275.

The patents to Zandberg and Schiffer or Jesiolowski disclose all of the above recited subject matter, with the exception of cover to cover the bristle head and the figurine being in rabbit figure form.

The patent to Vandeventer discloses use of a cover to cover the bristle head of the toothbrush.

It would have been obvious to one of skill in the art to provide the modified toothbrush of Zandberg with a cover, as clearly suggested by Vandeventer, to protect the bristle head during for example travel.

With respect to claim 59, while the Zandberg figure appears to be human like, it appears but a mere choice of design to make the figure any shape so desired. It would have been obvious to one of skill in the art to make the figure of Zandberg any shape so desired, including rabbit shaped, lacking any criticality of such shape. There appears no patentable significance to the particular form of the figurine.

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***Response to Arguments***

Applicant's arguments with respect to claims 54-59 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

Claims 46-53 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action.

Claims 61-65 are allowed.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Gary K. Graham at 703-308-1270. The Examiner can normally be reached Tuesday through Friday.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Robert Warden, can be reached on (703) 308-2920. The fax phone number for this Group is (703) 305-7719.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0651.

  
GARY K. GRAHAM  
PRIMARY EXAMINER  
GROUP 1700

May 10, 1999  
gkg